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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/729,343	10/16/96	LEE	D

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HM42/0316

EXAMINER

KULKOSKY, P

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

03/16/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
03/729,343

Applicant(s)  
D. J. Lee et al

Examiner  
P. Kullosky

Group Art Unit  
1615

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 7/14/97 & 11/17/97.
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1 - 26 is/are pending in the application.
- Of the above claim(s) 23, 24, 25, 17-20 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1 - 26, 21, 22, 26 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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The Restriction Requirement is made Final.

Newly presented claims 23,24,25 are withdrawn from consideration as not reaching upon the elected invention. The methods claimed comprise a method of Group II.

Claims 1-16,21,22,26 are rejected under 35 U.S.C 103 as being unpatentable over Chow 5,525,148 or C.A. 113:218168J or CA 87:73954.

The Applicants Response has been carefully considered.

The scope of calcium phosphate of the claims may include the calcium phosphate cements of the references.

Claims limited to X-ray data characteristics such as those of claims 6 and 7 define a poorly crystalline apatitic calcium phosphate disclosed as having improved properties. If the term "synthetic poorly crystalline" is interpreted broadly, the crystalline states of ~~same~~ may be close in structure to that of the reference products.

Claims 1-16,21,22,26 rejected under 35 U.S.C. 103(a) as being unpatentable over Nagata et al. 5,427,754 or Palmer et al 4,849,193 in view of Niwa et al 4,429,691.

The Applicants Remarks are not supported by evidence of property differences between the claimed "poorly crystalline" and the discussed "highly crystalline" calcium phosphate of the cited Prior Art.

The scope of the claims exceeds the supporting data of improved properties which is present in the specification. Thus, the specification working Examples describe procedures

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which may not be enabled by the cited Prior Art disclosures, but the claimed process is not limited thereto.

The Applicants' are requested it to identify which of the Prior Art Publications cited in the Information Disclosure Statement or rejections of record contain the closest examples of "poorly crystalline apatitic calcium phosphate" and what X-ray data confirm same.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kulkosky whose telephone number is (703) 308-1235.

Kulkosky/sg

March 6, 1998

A handwritten signature in black ink, appearing to read "P. Kulkosky". The signature is stylized with a large, looped initial "P" and a cursive "Kulkosky".

PETER F. KULKOSKY  
PRINCIPAL EXAMINER